

# **NEW JERSEY BUREAU OF SECURITIES**

**Investment Adviser  
and Representative**

## **REGISTRATION AND NOTICE FILING INSTRUCTIONS**

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FORM NJBOS-9

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**NEW JERSEY BUREAU OF SECURITIES**

**INVESTMENT ADVISER AND REPRESENTATIVE  
REGISTRATION AND NOTICE FILING INSTRUCTIONS**

**Investment Advisers**

The New Jersey Uniform Securities Law (1997), at N.J.S.A. 49:3-49(g), defines “investment adviser” as any person who, for direct or indirect compensation, engages in the business of advising others, either directly or through publications or writing, as to the value of securities or the advisability of investing in, purchasing, selling, or holding securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

Any financial planner or other person who provides investment advisory services to others for compensation as part of a business, or who holds himself out as providing investment advisory services to others for compensation, comes within the definition of “investment adviser.”

The Law requires investment advisers to register or notice file with the Bureau of Securities.

**Investment Adviser Representatives**

The New Jersey Uniform Securities Law (1997), at N.J.S.A. 49:3-49(s), defines “investment adviser representative” as a person, including but not limited to a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser registered with the Bureau, or who has a place of business located in New Jersey and is employed by or associated with a person registered or required to be registered as an investment adviser with the U.S. Securities and Exchange Commission, and who does any of the following:

1. makes any recommendations or otherwise renders advice regarding securities if the person has direct advisory client contact;
2. manages accounts or portfolios of clients;
3. determines recommendations or advice regarding securities;
4. solicits, offers, or negotiates for the sale of or sells investment advisory services; or
5. directly supervises any investment adviser representative or the supervisors of those

investment adviser representatives.

However, “investment adviser representative” does not include a broker-dealer or broker-dealer agent. Also, “investment adviser representative” does not include an investment advisory firm partner, officer, or director who does not perform any of the five functions listed above.

The Law requires investment adviser representatives to register with the Bureau of Securities.

#### Investment Adviser Registration Depository

The New Jersey Bureau of Securities participates in the Investment Adviser Registration Depository (IARD), which is operated by the National Association of Securities Dealers. The IARD processes data and fees regarding both investment advisers and investment adviser representatives. Further information about the IARD can be obtained from its web site, <http://www.iard.com>. For specific questions regarding the IARD, you can contact the NASD’s IARD support line at (240) 386-4848.

The IARD currently accepts the following forms and fees:

1. Form ADV Part I (filed electronically) regarding investment advisers.
2. Form U-4 (filed electronically) regarding investment adviser representatives.
3. Form ADV-W (filed electronically) regarding investment adviser withdrawals.
4. Form U-5 (filed electronically) regarding investment adviser representative withdrawals.
5. Fee payments (\$100 per investment adviser and \$50 per representative).

The foregoing forms and fees must be sent directly to the IARD; they may not be sent to the Bureau. The other items required for registration or notice filing must be sent in paper format to the Bureau, as described on page 5.

#### Types of Investment Adviser Filings

In accordance with the National Securities Markets Improvement Act of 1996 and the regulations thereunder, investment advisers with \$30 million or more under management must register at the Federal level with the SEC, investment advisers with less than \$25 million under management must register at the state level, and investment advisers with assets under management between \$25 million and \$30 million may register at either the Federal level or the state level.

The New Jersey Bureau of Securities accepts three types of investment adviser filings:

1. An investment adviser which maintains its principal place of business in New Jersey and has less than \$25 million or \$30 million of assets under management must make an in-state registration with the Bureau.
2. An investment adviser which is headquartered in another state and registered with such other

state, but which has a place of business in New Jersey, or more than five clients in New Jersey,

must make an out-of-state registration with the Bureau. (Such an investment adviser observes the books and records, bonding, and net capital requirements of its home state.)

3. An investment adviser which is registered with the SEC and has a place of business in New Jersey or has no place of business in New Jersey but has more than five clients in New Jersey must make a notice filing with the Bureau.

#### Items to File with Bureau - In-State Registration

1. One copy of Form ADV Part II with all relevant schedules. The form must have an original signature.
2. Balance sheet, which need not be certified, as of a date within 90 days of the application to the Bureau.
3. Sample investment advisory contract.
4. Sample business card, letterhead, brochure, circular, advisory newsletter, form letter, advertisement, or sales literature intended for distribution to prospective clients.
5. In the event that the New Jersey registration was prompted by a withdrawal from SEC registration, a copy of the Form ADV-W filed to withdraw from SEC registration.

As noted above, Form ADV Part I must be filed with the IARD, and the \$100 fee must be paid through the IARD.

#### Items to File with Bureau - Out-of-State Registration

1. One copy of Form ADV Part II with all relevant schedules. The form must have an original signature.
2. Written declaration that the investment adviser is in compliance with the requirements of its home state as to books and records, bonding, and net capital.
3. Sample investment advisory contract.
4. Sample business card, letterhead, brochure, circular, advisory newsletter, form letter, advertisement, or sales literature intended for distribution to prospective clients.

As noted above, Form ADV Part I must be filed with the IARD, and the \$100 fee must be paid through the IARD.

#### Items to File with Bureau - Notice Filing

1. One copy of Form ADV Part II with all relevant schedules. The form must have an original signature.

As noted above, Form ADV Part I must be filed with the IARD, and the \$100 fee must be paid through the IARD.

### Exemptions from Investment Adviser Registration

The following are excluded from the definition of “investment adviser,” in accordance with N.J.S.A. 49:3-49(g)(2):

1. A bank, savings institution, or trust company.
2. A lawyer, accountant, engineer, or teacher whose performance of advisory services is solely incidental to the practice or conduct of the profession and who does not hold himself out as providing advisory or financial services and who receives no special compensation for those investment advisory or financial planning services. The “solely incidental” language is narrowly construed in accordance with SEC Release IA-1092. Thus, an accountant who receives referral fees cannot rely on the “solely incidental” language.
3. A broker-dealer registered under this law. Thus, the Bureau does not permit a broker-dealer to file an application for investment advisory registration or notice filing.
4. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation.
5. A person who gives advice, analyses, or reports exclusively about securities issued by the U.S. Government, any state, or any municipality, or about similar securities issued by Canada or Canadian Provinces.
6. A person whose clients in this state are investment companies, investment advisers, broker-dealers, banks, or certain financial institutions.
7. A federally registered investment adviser (a notice filing is required) or a person excluded from the definition of “investment adviser” under Federal law.
8. An investment adviser representative.
9. Any other person the Bureau Chief may (by rule or order) designate as excluded.

### Investment Adviser Representative Registration

Investment adviser representatives must register with the New Jersey Bureau of Securities as follows:

1. In-state registered firms: all investment adviser representatives must be registered with the Bureau.
2. Out-of-state registered firms: all investment adviser representatives with New Jersey clients must be registered with the Bureau.
3. Federally registered notice filing firms: investment adviser representatives must be registered with the Bureau if they have an office location in New Jersey.

### One-Person Investment Advisory Firms

If a one-person investment advisory firm is established as a sole proprietorship, it must register as an investment adviser, but need not separately register the person as a representative. If a one-person investment advisory firm is established as a business entity (corporation, LLC, etc.), it must register as an investment adviser, and must register the person as a representative.

### Items to File for Investment Adviser Representative Registration

Prior to registering investment adviser representatives in New Jersey, the investment advisory firm must be registered or notice filed in New Jersey.

Investment adviser representative registration is commenced by electronic transmission of the applicant's Form U-4 to the IARD. The IARD will automatically deduct the New Jersey fee of \$50 from the firm's IARD account. If the applicant needs to take an examination, the examination series number should be noted on the Form U-4. The IARD will automatically deduct the examination fee from the firm's IARD account.

The investment advisory firm should arrange for the applicant to be fingerprinted. The fingerprint card should be an "Applicant" (non-criminal) card. It may be an FBI fingerprint card or a State Police fingerprint card. The fingerprint card should be sent to the Bureau, not to the IARD.

### Examinations

The examination requirement for investment adviser representative registration is satisfied with proof of a passing score on one of the two following examinations:

1. The Uniform Investment Adviser Law Examination (Series 65); or
2. The General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66).

### Examination Waivers

The Bureau Chief may grant a waiver from the investment adviser representative examination requirement, based on a written request detailing the applicant's knowledge, training, and experience in the securities field; a minimum of two years' experience is required.

Pursuant to a Bureau Order dated December 7, 2001, and found at 2A Blue Sky L. Rep. (CCH) Para. 40,692G, the examination requirement for investment adviser representative registration shall be waived for a person who holds any of the following designations or certifications:

Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania

Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants

Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts

Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

### Grandfather Provisions

Certain broker-dealer agents are grandfathered, i.e. they are exempt from taking the investment adviser representative examinations. For further information, please call the Bureau and request the Investment Adviser Representative Grandfathering Orders, or consult 2A Blue Sky L. Rep. (CCH) Para. 40,692H.

### Requests for Examinations

Normally, examinations are requested by appropriate entries on Form U-4 filed with the IARD.

To request an examination not in connection with an IARD registration application, Form U-10 should be filed with the appropriate fee. (Copies of Form U-10, with instructions, may be obtained from the Bureau.) The Bureau does not “sponsor” any person for any examination.

### Exam Preparation Courses and Literature

The Bureau does not provide exam preparation courses or literature. The Bureau does not recommend or endorse any private providers of exam preparation courses or literature.

### “DBA” Names

If a person is an agent of a broker-dealer, but operates under a different business entity name, the business entity name must be included on your ADV application as an investment adviser. This is true regardless of whether the broker-dealer pays commissions to the agent or to the business entity, and regardless of whether or not any business activity occurs outside the scope of the relationship between the broker-dealer and the agent.

### Renewals

#### A. Investment Advisers

Investment adviser registrations and notice filings are effective for one calendar year (or less) and expire on December 31 of each year. Registrations and notice filings must be renewed annually for the investment adviser to remain current. The renewal fee is \$100. The renewal process is as follows:

1. For in-state registrants: pay the renewal fee through the IARD. The Bureau sends out the renewal



form in October. It must be completed, signed, and returned to the Bureau with all attachments by December 1.

2. For out-of-state registrants: pay the renewal fee through the IARD. No additional paperwork is involved.
3. For Federally registered notice filers: pay the renewal fee through the IARD. No additional paperwork is involved.

#### B. Investment Adviser Representatives

Investment adviser representative registrations are effective for one calendar year (or less) and expire on December 31 of each year. Registrations must be renewed annually for the investment adviser representative to remain current. The renewal fee is \$50. For all investment adviser representatives, pay the renewal fee through the IARD. No additional paperwork is involved.

#### Amendments

Amendments to Form ADV Part I must be filed with the IARD promptly, whenever there is a material change in any answer. There is no fee for such amendments.

Amendments to Form ADV Part II must be filed with the Bureau promptly, whenever there is a material change in any answer. There is no fee for such amendments.

Amendments to Form U-4 must be filed with the IARD promptly, whenever there is a material change in any answer. There is no fee for such amendments.

#### Withdrawals

Investment adviser withdrawals must be made by filing a Form ADV-W with the IARD. Investment adviser representative withdrawals must be made by filing a Form U-5 with the IARD. Withdrawals become effective 30 days after receipt of an application to withdraw or within such other period of time as the Bureau Chief may determine by rule or order.

#### Accountants

On November 16, 1998, the New Jersey Board of Accountancy adopted regulations permitting accountants in New Jersey to receive commissions, performance fees, and contingent fees from non-attest clients. These regulations can be found at N.J.A.C. 13:29-3.8 and 3.12. These regulations have led many New Jersey accounting firms to explore the possibility of functioning as investment advisory firms. Unless an exemption or exclusion from registration exists, such an accounting firm (or a specially created subsidiary) must register or notice file as an investment adviser with the Bureau of Securities, and the designated contact persons to arrange such fees must register as investment adviser representatives with the Bureau of Securities.

#### Additional Information

For complete information, please consult the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., and the regulations thereunder, N.J.A.C. 13:47A-1.1 et seq.

### Principal Office and Place of Business

“Principal office and place of business” of an investment adviser means the executive offices of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control and coordinate the activities of the investment adviser.

(Investment Advisers Act of 1940, Rule 203A-3(c))

### Place of Business

“Place of business” of an investment adviser representative means:

- (1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and
- (2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients

(Investment Advisers Act of 1940, Rule 203A-3(b))

An investment adviser representative would be considered to hold himself or herself out to the general public if he or she has a location at which advisory business is conducted. For example, holding out would include identifying the location by (a) publishing the information in a professional directory, (b) publishing information in a telephone listing, (c) advertising, (d) indicating the location on stationery, including letterheads, business cards, or similar communications.

### De Minimis Standard

A person shall be exempt from registration as an investment adviser or from making a notice filing...if:

- (1) the person has a place of business in this State and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State...or
- (2) the person has no place of business in this State, and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State....

(N.J.S.A. 49:3-56(g))

The following are deemed a single client:

- (1) A natural person and:
  - (i) Any minor child of the natural person;
  - (ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
  - (iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and
  - (iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;
- (2)
  - (i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as “owner”); and
  - (ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(Investment Advisers Act of 1940, Rule 203(b)(3)-1)